

Attorney Docket No. LMND.P098C

**BEST AVAILABLE COPY****REMARKS**

Applicants respectfully request entry of the foregoing amendments and consideration of the remarks. Claims 57-92 are pending in the application. Claims 64-66, 69, 75-77, 79-83, and 85-91 are withdrawn from consideration. Claims 57-63, 67, 68, 70-74, 78, 84, and 92 are rejected. Claims 57, 70, 78, 84, and 92 are amended herein, and no new matter is added by these amendments. Claims 62, 63, 69, and 81 are canceled herein. Applicants respectfully submit that claims 57-61, 67, 68, 70-74, 78, 84, and 92, as amended herein, are patentably distinct from the cited prior art and the prior art made of record, and therefore the rejections under 35 U.S.C. §102(b) have been overcome.

Thus, Applicants respectfully request withdrawal of the rejections.

Applicants wish to thank Examiner Truong for the telephone conferences granted on August 15, 2003 and November 26, 2003 during which the restriction was discussed, and hereby affirm the election without traverse of the species in Figure 13 and claims 57-61, 67, 68, 70-74, 78, 84, and 92.

***Double Patenting***

Claims 57-63, 67, 68, 70-74, 78, 84, and 92 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 6, 7, 9-17, 23, 28, and 29 of United States Patent number 6,508,825. Applicants will file a terminal disclaimer upon allowance of the claims.

Claims 57-63, 67, 68, 70-74, 78, 84, and 92 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, and 4 of United States Patent number 6,599,304. Applicants will file a terminal disclaimer upon allowance of the claims.

***Claim Rejections Under 35 USC §102***

Claims 57-63, 67, 68, 70-74, 78, 84, and 92 are rejected under 35 USC §102(b) as being clearly anticipated by Lymberopou, German Patent Application number DE 29 45 237 A1 ("Lymberopou"), because the Examiner asserts "note in Figures 12 and 13, an elongated shaft (5) having two spreading members (28) disposed at its distal end; an actuating assembly (8) positioned along said shaft (5) to move the two spreading

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Attorney Docket No. LMND.P098C

members (28) laterally in response to an actuation force of actuating assembly (8), wherein each of said spreading member (28) includes a cam follower on an interior of said spreading member (28), and wherein said actuating assembly includes a cam (30) in which contact with the cam follower to urge said spreading member (28) in a substantially lateral direction." Applicants are submitting herewith an English translation of Lymberopou.

Applicants respectfully submit that Lymberopou discloses a stone extractor for the transurethral removal of stones located in the ureter, composed of a flexible catheter tube of plastic or similar and a flexible pulling and pushing unit, e.g. cable, which can be displaced along the catheter tube, to activate a gripping device provided at the free end of the catheter tube for the stone (Lymberopou translation, pg. 3, lines 15-19). The cup-shaped gripping device is formed from leaf-shaped wings which run curved inwards in cross-section and are swivellable about axes which are housed in the catheter tube (Lymberopou translation, pg. 8, lines 9-14). After placing the stone extractor in the ureter, the leaf-shaped wings are opened in order to widen the wall of the ureter, thereby detaching the stone. The stone detached stone can fall into or otherwise be captured in the opened mouth of the gripping device and, by carrying out the closing movement of the leaf-shaped wings, the stone is grasped and held clamped (Lymberopou translation, pg. 8, lines 16-34).

In contrast, Applicants respectfully submit that the catheter of claim 57 includes two spreading members wherein the free distal ends of the spreading members are configured to apply a fracturing force to tissue including at least one of tissue of a blood vessel and tissue of the vascular occlusion and configured to support advancing the catheter through the tissue so that the tissue remains external to the catheter. Therefore, as Lymberopou discloses capturing a stone in the opened mouth of the gripping device, Lymberopou fails to disclose a catheter that advances through the tissue so that the tissue remains external to the catheter, and claim 57 as amended is distinguished over Lymberopou. Likewise, as claim 57 is allowable over Lymberopou, claims 58-61, 67, and 68 are allowable over Lymberopou because they depend from claim 57.

**BEST AVAILABLE COPY**

Attorney Docket No. LMND.P098C

Further, independent claim 70 as amended includes limitations similar to claim 57, so claim 70 is also patentable over Lymberopou. Additionally, as claims 71-74 and 78 depend from claim 70, claims 71-74 and 78 are patentable over Lymberopou.

Moreover, independent claims 84 and 92 as amended include limitations similar to claim 57, so claims 84 and 92 are also patentable over Lymberopou.

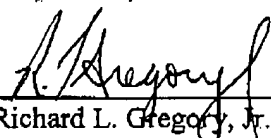
### CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that claims 57-61, 67, 68, 70-74, 78, 84, and 92 are in condition for allowance. Thus, allowance of the claims is requested. If in the opinion of Examiner Truong a telephone conference would expedite the prosecution of the subject application, or if there are any issues that remain to be resolved prior to allowance of the claims, Examiner Truong is encouraged to call Rick Gregory at (408) 236-6646.

### AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

Please charge deposit account 501914 for any fees due in connection with this Office Action response.

Respectfully submitted,

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